

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAMEN D. RABB,

Plaintiff,

v.

ESTEVEN FIGUEROA, et al.,

Defendants.

Case No. 1:23-cv-00843-SAB

ORDER ENTERING STIPULATED
PROTECTIVE ORDER

(ECF No. 18)

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

This action is likely to involve the disclosure of confidential materials for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order (“Order”).

The parties acknowledge that this Order does not confer blanket protection on all disclosures or discovery responses, and that the protection this Order affords extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3 below, that this Order does not entitle them to file confidential information or items under seal; General Local Rule 141

sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file materials under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c) and that may only be disclosed to the counsel of record in this action, as well as counsel’s support staff and experts.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection as stated in Section 2.2 but that may be disclosed to the parties in this action.

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced, made available for inspection, or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been or may be retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, or who may testify as a non-retained expert.

2.7 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.8 Counsel of Record: attorneys who are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, as well as their support staff. No current inmate or relative of a Party shall qualify as support staff in this case.

2.9 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Counsel of Record (and their support staffs).

2.10 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.11 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors. Professional Vendors who visit any prison, must comply with the institution's rules and entry procedures, as well as any applicable portions of the Department Operations Manual and the California Code of Regulations.

2.12 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL" or "CONFIDENTIAL—ATTORNEYS' EYES ONLY."

2.13 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but also: (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that reveal Protected Material. This order does not govern any use of Protected Material at trial.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of: (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment after the completion and exhaustion of all appeals, re-hearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time under applicable law.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
3 or Non-Party that designates information or items for protection under this Order must take care
4 to limit any such designation to specific material that qualifies under the appropriate standards.
5 The Designating Party must designate for protection only those parts of material, documents,
6 items, or oral or written communications that qualify – so that other portions of the material,
7 documents, items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
11 unnecessarily encumber or retard the case development process or to impose unnecessary
12 expenses and burdens on other parties) expose the Designating Party to sanctions.

13
14 If it comes to a Designating Party's attention that information or items that it designated
15 for protection do not qualify for protection, the Designating Party must promptly notify all other
16 Parties that it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order,
18 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
19 protection under this Order must be clearly so designated before the material is disclosed or
20 produced.

21
22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but
24 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
25 Party affix the legend "CONFIDENTIAL" or "CONFIDENTIAL—ATTORNEYS' EYES
26 ONLY" to each page that contains protected material provided that such marking does not
27 obscure the content of any record. If only a portion or portions of the material on a page
28

1 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate markings in the margins).

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
4 Designating Party identify the specific portions of the testimony as to which protection is sought
5 within 14 days of a hearing where no court reporter was present, or, in the case of a proceeding
6 where a court reporter is present, within 14 days of receipt of the transcript. Only those portions
7 of the testimony that are appropriately designated for protection within the 14 days shall be
8 covered by the provisions of this Stipulated Protective Order.

9
10 (c) for information produced in some form other than documentary and for any other
11 tangible items, that the Producing Party affix in a prominent place on the exterior of the item,
12 container, or containers in which the information or item is stored the legend
13 “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only a portion
14 or portions of the information or item warrant protection, the Producing Party, to the extent
15 practicable, shall identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
17 designate qualified information or items does not, standing alone, waive the Designating Party’s
18 right to secure protection under this Order for such material. Upon timely correction of a
19 designation, the Receiving Party must make reasonable efforts to assure that the material is
20 treated in accordance with the provisions of this Order.

21
22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
24 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
25 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
26 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
27 challenge a confidentiality designation by electing not to mount a challenge promptly after the
28 original designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
2 process by providing written notice to the Designating Party of each designation it is challenging
3 and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has
4 been made, the written notice must recite that the challenge to confidentiality is being made in
5 accordance with this specific paragraph of the Order. The parties shall attempt to resolve each
6 challenge in good faith and must begin the process by conferring within 7 days of the date of
7 service of notice unless the Parties agree to confer on a later date. In conferring, the Challenging
8 Party must explain the basis for its belief that the confidentiality designation was not proper and
9 must give the Designating Party an opportunity to review the designated material, to reconsider
10 the circumstances, and, if no change in designation is offered, to explain the basis for the chosen
11 designation. A Challenging Party may proceed to the next stage of the challenge process only if
12 it has engaged in this meet-and-confer process first or establishes that the Designating Party is
13 unwilling to participate in the meet-and-confer process in a timely manner.

14 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
15 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
16 Civil Local Rule 251 within 21 days of the initial notice of challenge or within 14 days of the
17 parties agreeing that the meet and confer process will not resolve their dispute, whichever is
18 earlier. Each such motion must be accompanied by a competent declaration affirming that the
19 movant has complied with the meet and confer requirements imposed in the preceding
20 paragraph. Failure by the Designating Party to make such a motion including the required
21 declaration within 21 days (or 14 days, if applicable) shall automatically waive the
22 confidentiality designation for each challenged designation. In addition, the Challenging Party
23 may file a motion challenging a confidentiality designation at any time if there is good cause for
24 doing so, including a challenge to the designation of a deposition transcript or any portions
25 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
26 declaration affirming that the movant has complied with the meet and confer requirements
27 imposed by the preceding paragraph.
28

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL—ATTORNEYS' EYES ONLY" Information or items. Counsel for the Receiving Party may not disclose any information or items designated "CONFIDENTIAL—ATTORNEYS' EYES ONLY" to the Parties, any third party, or the public.

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, information or items designated "CONFIDENTIAL—ATTORNEY'S EYES ONLY" may only be disclosed to:

(a) the Receiving Party's Counsel of Record in this action, as well as staff and employees of said Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to be

Bound” that is attached hereto as Exhibit A. Staff employed by Counsel will not disclose any item or information designated “CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or make copies of any item or information so designated, except as necessary for this litigation. Counsel is responsible for ensuring that their staff complies with this Order;

(b) Experts (as defined in this Order) of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the “Acknowledgment and Agreement to be Bound” (Exhibit A);

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to be Bound” (Exhibit A);

(e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment to be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court, and provided that the witness does not leave any deposition with copies of any Protected Material. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order;

(f) the author or recipient of the document in question or a custodian or other person who otherwise possessed or knew the information contained in it; and

(g) mediators, settlement officers, and their supporting personnel, mutually agreed on by the Parties engaged in settlement discussions.

7.3 Disclosure of “CONFIDENTIAL” Information or items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, information or items designated “CONFIDENTIAL” may only be disclosed to:

1 (a) the Receiving Party's Counsel of Record in this action as well as employees of
2 said Counsel of Record to whom it is reasonably necessary to disclose the information for this
3 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
4 attached hereto as Exhibit A. Staff employed by Counsel will not disclose any item or
5 information designated "CONFIDENTIAL" or make copies of any item or information so
6 designated, except as necessary for this litigation. Counsel is responsible for ensuring that their
7 staff complies with this Order;

8 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
9 reasonably necessary for this litigation and who have signed the "Acknowledgment and
10 Agreement to be Bound" (Exhibit A);

11 (c) the court and its personnel;

12 (d) court reporters and their staff, professional jury or trial consultants, and
13 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
14 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (e) during their depositions, witnesses in the action to whom disclosure is
16 reasonably necessary and who have signed the "Acknowledgment and Agreement to be Bound"
17 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court, and
18 provided that the witness does not leave any deposition with copies of any Protected Material.
19 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
20 Material must be separately bound by the court reporter and may not be disclosed to anyone
21 except as permitted under this Order;

22 (f) the author or recipient of the document in question or a custodian or other person
23 who otherwise possessed or knew the information contained in it;

24 (g) mediators, settlement officers, and their supporting personnel, mutually agreed
25 on by the Parties engaged in settlement discussions; and
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(h) the Parties in this action.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

8.1 If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the Party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

8.2 If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is

protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material labeled "CONFIDENTIAL" or "CONFIDENTIAL—ATTORNEYS' EYES ONLY" to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, including identifying the person or persons to whom unauthorized disclosures were made, (b) use

its best efforts to retrieve all unauthorized copies of the Protected Material, and (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Local Rule 141 provided, however, that a Party filing a request to seal documents designated by another as “CONFIDENTIAL” or “CONFIDENTIAL—

ATTORNEYS’ EYES ONLY” shall state in the request that the documents were designated as “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” by the Designating Party, and the Designating Party shall then bear the burden of showing good cause or demonstrating compelling reasons for sealing the documents using the procedures set forth in Local Rule 141. In this instance, the Designating Party must file a document establishing that the designated materials are sealable within seven (7) court days of the filing of the motion to seal. In the event the Court denies any party’s Request to Seal Documents, the material may be filed in the public record.

13. **FINAL DISPOSITION**

13.1 Return or Destruction of Protected Material. Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned, or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material, other than the exceptions set forth in section 13.2.

13.2 Right to Retain Certain Categories of Material. Notwithstanding this section, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, evidence produced in discovery, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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3 Dated: October 9, 2023

Respectfully submitted,

4
5 /S/ Brian M. Pomerantz (as authorized on
6 October 9, 2023)

7 Brian M. Pomerantz
Attorney for Plaintiff

8 Dated: October 9, 2023

Respectfully submitted,

9 ROB BONTA
10 Attorney General of California
11 JANET N. CHEN
Supervising Deputy Attorney General

12 

13 JENNIFER BURNS
14 Deputy Attorney General
15 Attorneys for Defendants
E. Figueroa and E. Chavez

16
17 EXHIBIT A

18
19 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

20 I, _____ [print or type full name], of _____

21
22 _____ [print or type full address], declare under penalty of perjury that I have read in its

23 entirety and understand the Stipulated Protective Order that was issued by the United States

24 District Court for the Eastern District of California on _____ (date) in the case of

25 *Rabb v. Figueroa, et al.*, Case No. 1:23-cv-00843- SAB (PC). I agree to comply with and to be

26 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that

27 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I

28 solemnly promise that I will not disclose in any manner any information or item that is subject to

1 this Stipulated Protective Order to any person or entity except in strict compliance with the
2 provisions of this Order.

3 I further agree to submit to the jurisdiction of the United States District Court for the
4 Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
5 Order, even if such enforcement proceedings occur after termination of this action.

6
7 I hereby appoint _____ [print or type full name] of
8 _____ [print or type full address and telephone number] as my
9 California agent for service of process in connection with this action or any proceedings related
10 to enforcement of this Stipulated Protective Order.

11 Date: _____

12
13 City and State where sworn and signed: _____

14 Printed name: _____ [printed name]

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17 Signature: _____ [signature]

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COURT ORDER ENTERING STIPULATED PROTECTIVE ORDER

Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that:

1. The above stipulated protective order is entered;
2. The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents which are to be filed under seal will require a written request which complies with Local Rule 141;
3. The party making a request to file documents under seal shall be required to show either good cause or compelling reasons to seal the documents, depending on the type of filing, Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009); Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1101 (9th Cir. 2016); and
4. If a party's request to file Protected Material under seal is denied by the Court, then the previously filed material shall be immediately accepted by the court and become information in the public record and the information will be deemed filed as of the date that the request to file the Protected Information under seal was made.

IT IS SO ORDERED.

Dated: **October 10, 2023**


UNITED STATES MAGISTRATE JUDGE